In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-117

JOHN IANNELLI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the Southern District of New York of aiding and abetting the misapplication of funds of a federally insured bank and of conspiracy to commit that offense. He was given concurrent sentences of imprisonment for 18 months on three counts and a suspended sentence with probation on the other counts. The court of appeals affirmed the conviction on May 22, 1972 (Pet. App. 1a-2a) with an opinion (Pet. App. 4a-14a) that sets forth the evidence in some detail. A petition for rehearing was denied on June 19, 1972. The

petition for a writ of certiorari, filed on July 21, 1972, is out of time under Rule 22-2 of the rules of this Court.

The petition does not in any event present an issue worthy of review. The evidence detailed in the opinion below, showed, *inter alia*, that after the bank's regional vice president had instructed Michaels, an assistant treasurer of the bank, not to make any more loans to petitioner, petitioner and co-defendant Tortora arranged with Michaels to send five "straw men" to the bank to obtain loans which would go into the petitioner's corporate account (Pet. App. 6a-8a). In light of these facts, the contention that Michaels' testimony exonerated petitioner is, as the court below said, "simply without merit" (Pet. App. 10a). As the court also held (Pet. App. 9a), the delay in returning an indictment was not a basis for dismissal, since petitioner made no showing of prejudice and the government offered an appropriate explanation for the interval. See *United States* v. *Marion*, 404 U.S. 307.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

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